

**CHANGE**

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

2150.3A CHG 13


7/21/92

SUBJ: COMPLIANCE AND ENFORCEMENT PROGRAM

1. PURPOSE. This change transmits new pages to Appendix 1, Compliance/Enforcement Bulletin 92-3.
2. EXPLANATION OF CHANGES. This change transmits Compliance/Enforcement Bulletin 92-3, guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration screening evaluations. It provides new policies for enforcement actions on the failure of air carriers to detect simulated weapons, explosive devices, and other test objects during screening evaluations conducted by FAA Civil Aviation Security special agents.
3. DISTRIBUTION OF TRANSMITTAL. After filing the attached pages, this transmittal should be retained.

PAGE CONTROL CHART

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		x	7/21/92
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Administrator



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COMPLIANCE/ENFORCEMENT BULLETIN 92-3

**SUBJECT:** Guidance on enforcement action in cases involving detection of simulated weapons during Federal Aviation Administration (FAA) screening evaluations.

**DISCUSSION:** This bulletin provides new policies for enforcement actions on the failure of air carriers to detect simulated weapons, explosive devices, and other test objects during screening evaluations conducted by FAA Civil Aviation Security special agents.

In March 1988, the FAA adopted a strict civil penalty enforcement policy for air carriers' failure to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations. Under this policy, each failure to detect a test object resulted in a civil penalty of \$1,000 or \$10,000, depending solely upon the carrier's previous success in detecting test objects at that screening checkpoint. On December 14, 1988, the Sanction Guidance Table in Appendix 4 of this order was adopted. It provided for a civil penalty in the maximum range (\$7,500 to \$10,000 for the largest air carriers) for failure to detect a test object.

Since the FAA began strong enforcement action for these cases, the aggregate detection rate among air carriers has improved substantially. The industry has enhanced significantly its screener training and adopted an aggressive self-testing campaign. However, the rate of detecting test objects during FAA screening point evaluations has not improved significantly since 1990.

This bulletin establishes a new enforcement policy for these cases in an effort to further improve the detection rate. Under this policy, the FAA will place greater emphasis on identifying the causes of an apparent failure and the remedial action needed to improve compliance. Data on causes of failures and the success of remedial action will be maintained in the Civil Aviation Security Information System (CASIS). Information collected under this procedure will enable both air carriers and the FAA to analyze test object detection failures, to determine root causes of failures, to evaluate the effectiveness of corrective action, to make comparisons with improvements made elsewhere, and to assess the overall effectiveness of the passenger screening system. The goal will continue to be to prevent similar failures in the future. This policy is designed to encourage further improvements to the screening system and attain the ultimate goal of 100 percent detection.

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Each failure to detect a test object will result in either administrative action or civil penalty action. The previous failures to detect test objects at specific checkpoints will be among the significant factors considered in deciding which type of enforcement action to use and determining the appropriate amount of any civil penalty, but will not be solely determinative of the sanction. The type of action, as well as any civil penalty amount, will be determined only after consideration of all mitigating and aggravating circumstances surrounding the failure.

Civil penalty action generally will be the appropriate enforcement action. However, in some circumstances administrative action may be used. This policy allows broad discretion on the part of responsible FAA personnel to determine what enforcement action best suits the circumstances of the specific case.

ACTION: Effective September 1, 1992, all FAA personnel will use the procedures outlined in this bulletin to take action following the failure of an air carrier to detect simulated weapons, explosive devices, and other test objects during FAA screening checkpoint evaluations.

GUIDANCE:

1. Special agents shall prepare an enforcement investigative report (EIR) documenting each failure to detect a test object. Selection of the type of enforcement action, and determination of the amount of any proposed legal sanction, will depend upon the facts and circumstances surrounding the alleged violation.

2. The special agent should investigate and analyze factors that led to the failure and fully document the findings and analysis in the EIR. Each investigation should include, where appropriate, such evidence as witness statements or records of interviews of all principal witnesses and other evidence to describe the circumstances of the failure. The air carrier's cooperation and assistance should be requested and used to the extent possible. The investigation may include, but is not limited to, the following:

a. If insufficient scrutiny or attention by the screener contributed to the failure, the special agent should consider what factors contributed to that inattention or lack of scrutiny, such as poor training, fatigue, duty schedules, or the screener's fitness for duty that day.

b. The special agent should consider whether any distractions or environmental factors may have contributed to the failure, such as reflective glare on the x-ray monitor or noise in the area.

c. The special agent should determine whether the equipment was working properly and had been tested as required.

d. Interviews of the screener and supervisor generally will be central to the investigation, as will a careful assessment of the physical layout and environment of the screening point. Complete witness statements should be obtained.

3. The special agent should consider the corrective action that may be needed to remedy the cause of the failure. The air carrier should be requested to assist in identifying the cause(s) of the failure and to formulate the most effective means of correcting deficiencies when they are observed. The special agent should, as soon as practicable, notify a responsible representative of the air carrier at the airport, the PSI, and the federal security manager, if assigned to the airport, upon his or her discovery of any condition that affects the safety or security of the operation.

4. Paragraph 205 and Chapter 11 of this Order provide for the use of administrative action instead of legal enforcement action in certain circumstances. In the case of a failure to detect a test object, administrative action may be taken when it is found that legal action serves no valid purpose and that use of an administrative action is in the public interest. While the use of administrative action is at the discretion of the field office, all of the following factors, none of which are determinative, must be present:

a. The air carrier has achieved a high success rate in detecting test weapons, explosives, and other objects at that station during recent passenger screening checkpoint evaluations. As an example, the air carrier may be considered highly successful when it has had no comparable failures in the previous 12 months. Comparable failures refers to similar causes of the failure, similar test objects, or other similar aggravating circumstances.

b. The failure to detect the test object did not result from egregious circumstances, such as those described in paragraph 5.c., below.

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c. The air carrier displays a constructive attitude toward complying with the regulations. This constructive attitude may be demonstrated in part by the carrier's cooperation in investigating the cause of the test object failure, and in determining and taking the corrective action that might best prevent a recurrence.

d. Neither the screener nor the supervisor lacked the training or qualifications required under the FAR.

There must be agreement between the air carrier and the FAA that corrective action acceptable to the FAA has been taken or will be taken within a reasonable period of time.

5. If a civil penalty is determined to be the appropriate sanction, the amount of the penalty should be based largely on an assessment of the nature and causes of the failure to detect the test object and the prior enforcement history of the responsible air carrier at that checkpoint. The sanction ranges refer to the ranges described in the Sanction Guidance Table, Appendix 4 of this order, and in Compliance/Enforcement Bulletin 92-1.

a. A civil penalty in at least the moderate range generally is appropriate. The civil penalty may be in the minimum range or the maximum range if unusual mitigating or aggravating circumstances exist.

b. The pattern of previous failures by that air carrier at a specific checkpoint is significant, and may warrant an increased or decreased civil penalty. Repeated failures to detect one type of test weapon, repeated failures to detect when using a specific type of equipment, and how remote in time previous failures were, should be considered.

c. When a failure results from egregious circumstances, a civil penalty in the maximum range generally is appropriate. Notwithstanding the effective date of this bulletin, problems with an air carrier's screening system or equipment that existed before the effective date, but were not corrected, may be considered in determining whether egregious circumstances exist. Examples of egregious circumstances include the following:

i. Failures to identify or correct a reasonably apparent contributing factor affecting the screener or environment. Such factors include training that does not meet the requirements of the FAR.



- ii. Serious neglect of duties by screener or supervisor, such as deliberate or gross lack of attention to assigned tasks.
- iii. Failure to meet screener training requirements.
- iv. Failure to meet screener employment standards.
- v. Failure to provide screener staffing levels consistent with the volume of persons processed through the checkpoint.

